

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MICHAEL BEHAYLO,  
Plaintiff,

-and-

JOHN BETTENCOURT,  
Plaintiff,

vs.

THE TOP-FLITE GOLF COMPANY,  
Defendant.

CIVIL ACTION NO. 05-30178-KPN

CIVIL ACTION NO. 05-30179-KPN

**DEFENDANT'S PROPOSED JURY  
QUESTIONS**

**You must decide and answer each question independently  
for each plaintiff**

1. Has the Plaintiff proven that the Defendant retained a substantially younger employee in the Plaintiff's position as a cost accountant after the Plaintiff was laid off, and if so whom?

As to John Bettencourt:

Yes \_\_\_\_\_ No \_\_\_\_\_

Name of substantially younger replacement: \_\_\_\_\_

As to Michael Behaylo

Yes \_\_\_\_\_ No \_\_\_\_\_

Name of substantially younger replacement: \_\_\_\_\_

2. Has the Plaintiff proven that the Defendant failed to treat the Plaintiff age neutrally when it laid him off from his position as a cost accountant?

As to John Bettencourt:

Yes \_\_\_\_\_ No \_\_\_\_\_  
As to Michael Behaylo

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "No" to question 1 and question 2 then answer no further questions for the Plaintiff for whom you have answered no. If your answer is "Yes" to either question 1 or question 2, proceed to the next question.

3. Based on the court's instructions, has the Plaintiff proven by a preponderance of the evidence that Plaintiff's age actually motivated the Defendant's decision to lay him off, and that his age was the determinative factor in the Defendant's decision?

As to John Bettencourt:

Yes \_\_\_\_\_ No \_\_\_\_\_

As to Michael Behaylo

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "No" to question 3 then answer no further questions for that plaintiff or plaintiffs. If your answer is "Yes" to question 3, proceed to the next question for the plaintiff or plaintiffs for whom you have answered yes.

4. Based on the court's instructions, has Plaintiff proven by a preponderance of the evidence that the Defendant intentionally discriminated against him because of his age when it laid him off?

As to John Bettencourt:

Yes \_\_\_\_\_ No \_\_\_\_\_

As to Michael Behaylo

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "No" to question 4 then answer no further questions. If your answer is "Yes" to question 4, proceed to the next question.

5. Do you find that Plaintiff, if not laid off in April 2004, would in any event have been laid off as a result of a business restructuring by the end of 2005?

As to John Bettencourt:

Yes \_\_\_\_\_ No \_\_\_\_\_

As to Michael Behaylo

Yes \_\_\_\_\_ No \_\_\_\_\_

6. What damages, if any, do you award Plaintiff to compensate him for backpay that he would have received from Defendant if the age discrimination had not occurred?

As to John Bettencourt:

\$ \_\_\_\_\_

As to Michael Behaylo

\$ \_\_\_\_\_

Proceed to next question.

7. Has Plaintiff proven by a preponderance of the evidence that the Defendant "willfully", as that term is described in my Instructions, violated federal law by discriminating against him on the basis of his age?

As to John Bettencourt:

Yes \_\_\_\_\_ No \_\_\_\_\_

As to Michael Behaylo

Yes \_\_\_\_\_ No \_\_\_\_\_

Respectfully Submitted,

/s/ Jay M. Presser, Esq.

Jay M. Presser, Esq.

BBO #405760

Counsel for Defendant

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Dated: February 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Defendant's, Proposed Jury Questions* was served upon the attorney of record for each other party, via hand delivery, on February 11, 2008.

/s/ Jay M. Presser, Esq.  
Jay M. Presser, Esq.